Decision No. R21-0081

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0287EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF ITS ELECTRIC AND NATURAL GAS DEMAND-SIDE MANAGEMENT (DSM) PLAN FOR CALENDAR YEARS 2021 AND 2022.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE CONOR F. FARLEY ACCEPTING SETTLEMENT AGREEMENT, APPROVING VARIANCES, AND GRANTING APPLICATION AS MODIFIED BY SETTLEMENT AGREEMENT

Mailed Date: February 12, 2021

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I. STATEMENT

A. Procedural Background

1. On July 1, 2020, Public Service Company of Colorado (PSCo) filed a Verified Application for Approval of its Electric and Natural Gas Demand Side Management Plan (DSM Plan) for Calendar Years 2021 and 2022 (Application). On the same day, PSCo filed Petitions for Waiver from Commission Rules 4753(k) and 4756(b).[1] Rule 4753(k) limits expenditures on the natural gas DSM program, and the budget for the natural gas DSM program proposed in the Application exceeds that limit. Rule 4756(b) prohibits fuel-switching from natural gas to other fossil fuel-derived energy sources within a gas utility's demand-side management program, and PSCo has proposed two beneficial electrification proposals in the Application that would do just that.

2. From July 8 to 20, 2020, Trial Staff of the Commission (Staff), the Colorado Energy Office (CEO), and the Office of Consumer Counsel filed notices of intervention by right and entries of appearance.

3. From July 20, 2020, to August 3, 2020, the City of Boulder (Boulder), City of Denver (Denver), National Resources Defense Council (NRDC), Sierra Club, Colorado Energy Consumers (CEC), Southwest Energy Efficiency Project (SWEEP), ChargePoint, Inc.

[1] 4 *Colorado Code Regulations* (CCR) 723-4.

(ChargePoint), Energy Efficiency Business Coalition, Energy Outreach Colorado (EOC), and Western Resource Advocates (WRA) filed motions or petitions to intervene.

4. On August 12, 2020, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

5. On September 2, 2020, the ALJ issued Decision No. R20-0641-I that granted the motions and petitions for intervention, scheduled a remote prehearing conference, and ordered the parties to confer before the conference about a procedural schedule.

6. On September 11, 2020, PSCo filed an Unopposed Motion to Approve Procedural Schedule, Vacate Prehearing Conference, and Request for Waiver of Response Time (Unopposed Motion).

7. On September 18, 2020, the ALJ issued Decision No. R20-0672-I that granted the Unopposed Motion, vacated the remote prehearing conference, adopted the procedural schedule proposed by the parties with minor modifications, and extended the statutory deadline to April 19, 2021 pursuant to § 40-6-109.5(1), C.R.S.

8. On October 26, 2020, the ALJ issued Decision No. R20-0751-I that granted an Unopposed Motion to Amend Testimony Deadlines and Request for Waiver of Response Time (Second Unopposed Motion) filed by PSCo. The basis for the request to extend the deadlines for answer and rebuttal testimony by one week was that the parties were engaged in settlement discussions and the extensions "would be beneficial to these discussions."[2]

[2] Second Unopposed Motion at 3 (¶ 7).

9. On November 25, 2020, PSCo filed an Unopposed and Unanimous Notice of Settlement in Principle, Motion to Vacate and Amend Procedural Schedule, and Request for Waiver of Response Time (Third Unopposed Motion). In the Third Unopposed Motion, PSCo requested that (a) the current procedural schedule be vacated; (b) December 3, 2020, be established as the deadline for filing the settlement agreement and a Motion to Approve the Settlement Agreement; (c) December 14, 2020, be established as the deadline for filing testimony in support of the settlement agreement; and (d) a remote hearing on the Settlement Agreement be held on December 21, 2020, or after the holidays.

10. On December 3, 2020, PSCo filed the Unopposed Comprehensive Settlement Agreement (Settlement Agreement) and a Joint Motion to Approve Unopposed Comprehensive Settlement Agreement and Unopposed Motion for Variance (Joint Motion). The variance sought in the Joint Motion is from the aggregate limit of 30 MW placed on the Critical Peak Pricing Pilot in COLO. PUC No. 8 Electric. The Critical Peak Pricing Pilot is a voluntary program that sends price signals that encourage participating customers to reduce their consumption during periods when forecasts indicate there will be high system loads, in return for lower annual demand charges.

11. On December 7, 2020, the ALJ issued Decision No. R20-0846-I that granted the Third Unopposed Motion, established December 14, 2020, as the deadline to file testimony in support of the Settlement Agreement, and scheduled a hearing on the Settlement Agreement for January 21, 2021. Decision No. R20-0846-I stated that the ALJ would make a final decision about whether the hearing would take place after reviewing the settlement testimony.

12. On December 14, 2020, PSCo, Staff, CEO, Boulder, NRDC, Sierra Club, SWEEP, EOC, ChargePoint, and WRA filed testimony in support of the Settlement Agreement, and CEC filed a Statement of Non-Opposition to the Settlement Agreement (Statement of Non-Opposition).

13. On January 19, 2021, the ALJ issued Decision No. R21-0035-I that vacated the hearing on the Settlement Agreement based on the ALJ's review of the Joint Motion, the Settlement Agreement, the testimony filed in support of the Settlement Agreement, and CEC's Statement of Non-Opposition.

B. Statutory Basis for, and Background of, DSM Proceedings

14. PSCo implements electric and gas DSM programs pursuant to §§ 40-1-102(5)-(8), 40-3.2-103, and 40-3.2-104, C.R.S. The Colorado General Assembly enacted these statutes in 2007, and their applicability is limited to investor-owned utilities. Section 40-1-102(6), C.R.S., defines DSM programs as, "energy efficiency, conservation, load management, and demand response programs or any combination of these programs."

15. For gas DSM programs, § 40-3.2-103, C.R.S., requires the Commission to adopt program expenditure targets equal to at least 0.5% of the utility's revenues and establish savings targets commensurate with the expenditures.

16. For electric DSM programs, § 40-3.2-104(2)(a), C.R.S., requires the Commission to "establish energy savings and peak demand reduction goals," rather than setting DSM budgets as a percentage of utility revenues. The statute requires the establishment of savings goals of at least five percent of a utility's retail peak load and five percent of its retail energy sales relative to the base year of 2018. The minimum goals must be achieved no later than 2028, based on savings achieved by measures installed between 2019 and 2028. PSCo has estimated that these statutory requirements translate into approximately 1,540 GWh in energy savings from 2019 through 2028 (or roughly 154 GWh per year) and 294 MW of demand reduction during the same period.[3]

[3] Decision No. C18-0417 issued on June 6, 2018 in Proceeding No. 17A-0462EG at 6 (¶ 24); Hearing Exhibit 101 filed on July 3, 2017 in Proceeding No. 17A-0462EG at 31:1-6 (Direct Testimony of Scott B. Brockett).

17. The Commission is further required to allow an opportunity for a utility's investments in electric DSM "to be more profitable to the utility than any other utility investment that is not already subject to special incentives."[4] Toward that end, the Commission is required to consider incentives that include: (a) rates of return on DSM investments that are higher than the rate of return on other types of investments; (b) accelerated depreciation or amortization of DSM investments; (c) the retention of shares of net economic benefits associated with a DSM program; and (d) cost recovery through a rate adjustment mechanism.[5]

18. PSCo has periodically filed proceedings to address strategic issues relating to PSCo's future DSM plans. A "Strategic Issues Proceeding" is intended to address PSCo's goals, budgets, policies, and procedures to inform future DSM plans. PSCo's last Strategic Issues Proceeding culminated in Decision Nos. C18-0417 and C18-0743[6] that established electric energy savings and demand reduction goals for PSCo. Those decisions established an annual electric energy savings goal of 500 GWh for the period 2019 through 2023,[7] an annual demand reduction from energy efficiency goal of 75 MW,[8] and demand response goals of 489 MW in 2021, 503 MW in 2022, and 520 MW in 2023.[9] The demand response goals exclude demand reductions from PSCo's energy efficiency efforts.[10] The Commission also set an annual "base budget" for electric energy efficiency of $78 million, but approved additional spending of 20 percent of that base budget to which a presumption of prudence would apply. The Commission thus effectively

[4] § 40-3.2-104(5), C.R.S.

[5] *Id*. at (a)-(d).

[6] Decision Nos. C18-0417 issued on June 6, 2018 in Proceeding No. 17A-0462EG. Decision No. C18-0743 issued on September 7, 2018 in the same proceeding. The latter modified the former.

[7] Decision No. C18-0417 at 21 (¶ 72).

[8] *Id*. at 10 (¶ 39).

[9] *Id*. at 26 (¶ 86).

[10] *Id*. at 25 (¶ 83).

approved overall annual spending of $93.6 million to achieve the annual goal of 500 GWh.[11] Finally, the Commission approved an annual budget of $12 million for PSCo's gas DSM programs in the last Strategic Issues Proceeding.[12]

19. This is the second DSM proceeding since the Commission issued its order in the most recent Strategic Issues Proceeding summarized above. The first DSM plan proceeding after the 2017 DSM Strategic Issues Proceeding was Proceeding No. 18A-0606EG, in which the Commission approved Public Service's 2019-2020 DSM Plan that is currently in effect.[13] In that proceeding, the Commission approved a settlement between the parties including, among other things: (a) electric efficiency budgets of $92.4 and $93.4 million in 2019 and 2020, respectively;[14] (b) gas DSM programs of $14.8 million and $14.9 million in 2019 and 2020, respectively;[15] (c) electric energy savings goal of 502 GWh in 2019 and 2020;[16] (d) demand reduction goals of 90 MW and 92 MW in 2019 and 2020, respectively;[17] and (e) gas saving goals of 701,761 dekatherms and 681,120 dekatherms in 2019 and 2020, respectively.[18] The parties also agreed that PSCo's "electric customers who switch from gas heating or water heating to electric heating or water heating will have access to the 2019/2020 DSM programs and incentives for electric technologies."[19] Finally, PSCo agreed "to provide testimony as part of its next DSM Plan to address its plans for beneficial electrification as applied to the DSM portfolio."[20]

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[11] *Id*. at 29 (¶ 97).

[12] *Id*., Attach. A at 5 (¶ 13).

[13] *See* Decision No. R19-0229 issued in Proceeding No. 18A-0606EG on March 8, 2019.

[14] *Id*. at 9 (¶ 41).

[15] *Id*. at 9 (¶ 41), 10 (¶ 43).

[16] *Id*. at 8 (¶ 37), 13 (¶ 57).

[17] *Id*. The goals for PSCo's demand response programs remained unchanged by the settlement at 465 MW in 2019 and 476 MW in 2020.

[18] *Id*.

[19] *Id*. at 12 (¶ 51).

[20] *Id*.

C. Settlement Agreement

20. Below, five significant provisions in the Settlement Agreement are summarized and compared to the pre-Settlement Agreement positions taken by the parties.

1. Energy Efficiency Goals and Budgets

21. Under the terms of the Settlement Agreement, PSCo will "maintain a filed electric energy efficiency ("EE") budget of approximately $90 million each year of the 2021-22 DSM Plan."[21] The Settlement Agreement also proposes an electric energy efficiency portfolio exceeding the Commission's goals of 500 GWh of electric energy savings and 75 MW of demand reduction established in Proceeding No. 17A-0462EG. The tables below compare the electric DSM budgets and forecasted savings targets for 2021 and 2022 agreed to by the Settling Parties, to those presented in the Application.

2021

	2021 DSM Plan Presented in Application[22]			2021 DSM Plan Presented in Settlement Agreement[23]		
	Budget ($)	**Energy Savings (kWh)**	**Demand Savings (kW)**	**Budget ($)**	**Energy Savings (kWh)**	**Demand Savings (kW)**
Electric Energy Efficiency	89,870,680	538,525,703	103,443	89,954,799	537,639,070	101,663
Electric Demand Response	21,105,938	567,633	84,632	23,284,188	589,782	94,410
Total	110,976,618	539,093,336	188,075	113,338,987	538,228,853	196,073

[21] Hearing Exhibit 105 at 4 (§ 1) (Settlement Agreement).

[22] Hearing Exhibit 106, Attach. SMW-4 at 20 (PSCo's Revised 2021/2022 DSM Plan).

[23] *Id*. at 21.

2022

	2022 DSM Plan Presented in Application[24]			2022 DSM Plan Presented in Settlement Agreement[25]		
	Budget ($)	**Energy Savings (kWh)**	**Demand Savings (kW)**	**Budget ($)**	**Energy Savings (kWh)**	**Demand Savings (kW)**
Electric Energy Efficiency	90,110,519	523,534,870	102,239	89,960,142	522,789,432	100,498
Electric Demand Response	21,615,300	786,344	105,901	23,820,175	809,843	116,098
Total	111,725,819	524,321,213	208,140	113,780,317	523,599,275	216,596

22. The annual electric energy efficiency budgets are below the $93.6 million level approved with a presumption of prudence in the 2017 Strategic Issues Proceeding. This allows PSCo "to retain operational flexibility" by "provid[ing] for headroom below the $93.6 million level approved by the Commission . . . in case there is a need for additional funds to implement the electric energy efficiency offerings included in the 2021-22 DSM Plan."[26] While the budgets contained in the Settlement Agreement are less than the energy efficiency budgets in PSCo's 2019-2020 DSM Plan approved in Proceeding No. 18A0606EG, they are "forecasted to result in greater electric energy savings (GWh) and electric demand reduction (MW), indicating greater energy savings per dollar spent compared to the 2019-2020 DSM Plan."[27] The budget proposed in the

[24] *Id*. at 28.
[25] *Id*. at 29.
[26] Hearing Exhibit 106 at 17:12-18:1 (Settlement Testimony of PSCo Witness Shawn M. White).
[27] *Id*. at 18:12-14.

Settlement Agreement increases the budgets for the Income-Qualified (IQ) energy efficiency programs in 2021 and 2022 by $172,443.[28]

23. The natural gas energy efficiency goals in the Settlement Agreement are slightly lower than those presented in the originally proposed DSM Plan. Nevertheless, they are still greater than the current goals approved in the 2019-2020 DSM Plan proceeding. Specifically, while the natural gas energy efficiency goal for 2019-2020 was 1,382,881 dekatherms (Dth), the goal for 2021-2022 is 1,580,580 Dth, which is a 14.3 percent increase.

24. The budget for natural gas energy efficiency in the Settlement Agreement slightly increased compared to the originally proposed 2021-2022 DSM Plan. The table below shows the changes between the original DSM plan and the plan proposed in the Settlement Agreement.

	2021		**2022**	
	Energy Savings (Dth)	**Budget ($)**	**Energy Savings (Dth)**	**Budget ($)**
Original Plan[29]	823,854	17,782,967	863,875	18,099,838
Settlement Plan[30]	780,872	18,499,094	799,708	18,498,555
% Change	-5.22%	4.03%	-7.43%	2.2%

25. As stated in the Settlement Agreement, "[r]evised gas budget adjustments emphasize Income-Qualified ["IQ"], Weatherization, Health & Safety, Beneficial Electrification, and high-efficiency, market-transformational products such as heat pumps, with reduced emphasis on rebates for new natural gas appliances."[31] For example, the parties agreed to expand DSM opportunities for income-qualified customers by increasing "the IQ gas budget by approximately

[28] Hearing Exhibit 106, Attach. SMW-4 at 18,19, 26, 27 (PSCo's Revised 2021/2022 DSM Plan).
[29] *Id*. at 6.
[30] *Id*. at 7.
[31] Hearing Exhibit 105 at 3 (§ I) (Settlement Agreement).

$1.4 million in 2021, and $1.4 million in 2022, primarily through increased rebates."[32] Because the gas budget exceeds the $15 million limit subject to a presumption of prudence approved in the last Strategic Issues Proceeding and permitted by Commission Rule 4753(k),[33] PSCo has requested a variance from that rule.

26. Finally, the budgets agreed to by the parties are cost-effective, as measured by the Modified Total Resource Cost test (MTRC), which is "an economic cost effectiveness test used to compare the net present value of the benefits of a DSM program or measure over its useful life, to the net present value of costs of a DSM measure or program for the participant and the utility."[34] The benefits include "the utility's avoided production, distribution and energy costs; the participant's avoided operating and maintenance costs; the valuation of avoided emissions; and non-energy benefits as set forth in rule 4753."[35] A ratio of greater than one is cost-effective.[36] As shown below, all relevant ratios associated with the programs in the Settlement Agreement are greater than one and thus cost-effective.[37]

	2021	**2022**
Total Electric Portfolio	1.58	1.61
Total Energy Efficiency Portfolio	1.54	1.56
Demand Response Portfolio	1.95	2.08
Natural Gas Portfolio	1.51	1.54

[32] *Id*. at 3 (§ II).
[33] 4 CCR 723-4.
[34] Rule 4751(o), 4 CCR 723-4.
[35] *Id*.
[36] Rule 4751(c), 4 CCR 723-4.
[37] Hearing Exhibit 106 at 23 (Table SMW-DSS-3) (Settlement Testimony of PSCo Witness Shawn M. White).

2. Income-Qualified Program

27. In the Settlement Agreement, the parties agreed to increase funding for the IQ program. As noted above, the budget proposed in the Settlement Agreement increases the budgets for the IQ electric DSM programs in 2021 and 2022 by $172,443 compared to the budgets contained in the original plan proposed by PSCo in the Application.[38] The parties also agreed to increase the budget for the IQ gas DSM program by $1.4 million each in 2021 and 2022.[39]

28. The parties agreed to several programmatic changes as well. Specifically, the parties agreed to change the name of this program from "low-income" to "income-qualified." The other changes focus on increased incentives for building shell measures, funding energy efficiency audits of IQ customer homes, and expanding the health and safety measures that were budgeted for in the preceding DSM Plan. As for the incentives for energy efficiency audits, PSCo is taking over their funding for 400 audits, which was previously covered by EOC. This will allow EOC to "leverage its limited funds to install and deliver measures to IQ customers that will provide reduced heating bills, a safer home environment with better indoor air quality, and a necessary first step toward the eventual electrification of home heating."[40]

29. Additionally, the parties agreed that PSCo "shall expand 'Health and Safety Measures' to include range hoods and bath fans."[41] This means that funds dedicated to the Health and Safety Measures category can now be used to purchase and install range hoods and bath fans for IQ customers. "These two new measures are important in addressing indoor air quality when

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[38] Hearing Exhibit 106, Attach. SMW-4 at 18,19, 26, 27 (PSCo's Revised 2021/2022 DSM Plan).

[39] Hearing Exhibit 105 at 3 (§ 2) (Settlement Agreement).

[40] Hearing Exhibit 1201 at 5:19-6:2 (Settlement Testimony of EOC Witness Luke Ilderton).

[41] Hearing Exhibit 105, Attach. A at 4 (§ II) (Settlement Agreement).

sealing and insulating homes, because building shell measures that make homes more efficient could also perversely cause new, negative indoor air quality issues."[42]

30. Finally, the Settlement Agreement creates a Beneficial Electrification Pilot for IQ customers. The goal of the Pilot is to "incentivize and study the addition of heat pumps and mini splits to IQ residences with the primary purpose of determining the ideal conditions for IQ heat pump installation."[43] PSCo will work with EOC to create the Pilot that will educate stakeholders and customers about installing heat pumps in IQ households.[44]

3. Beneficial Electrification

31. Beneficial electrification is:

> a utility's change in the energy source powering an end use from a nonelectric source to an electric source including transportation, water hearing, space heating, or industrial processes, if the change: (i) reduces system costs for the utility's customers; (ii) reduces net CO_2 emissions; or (iii) provides for a more efficient utilization of grid resources.[45]

32. PSCo included two beneficial electrification offerings in its original DSM Plan: (a) conversion of natural gas water heaters to electric heat pump water heaters, and (b) natural gas furnace usage offset or replacement with an electric heat pump.[46] In the Settlement Agreement, the parties agreed to PSCo's proposed beneficial electrification program proposed in the Application, as well as to several new provisions addressing beneficial electrification, including: (a) increasing the amount dedicated to beneficial electrification offerings from the $500,000 included in the Application to $1 million; (b) evaluating tiered incentives based on heating

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[42] Hearing Exhibit 1201 at 6:3-7 (Settlement Testimony of EOC Witness Luke Ilderton).

[43] Hearing Exhibit 106 at 26:18-20 (Settlement Testimony of PSCo Witness Shawn M. White).

[44] *Id.* at 26:20-27:3.

[45] § 40-3.2-106(6)(a), C.R.S.

[46] Hearing Exhibit 106 at 29:5-10 (Settlement Testimony of PSCo Witness Shawn M. White).

efficiency; (c) evaluating the expansion of current commercial heat pump offerings; (d) offering cold climate heat pumps with tiered incentives; (e) offering Trade Partner or Distributor incentives; and (f) offering substantial market transformation and workforce training activities and an associated budget.[47] While these offerings focus in large part on increasing the deployment of heat pumps, PSCo "will continue to provide support for efficient air conditioning products and natural gas appliances, [which] represent[s] a compromise position for some parties" who wanted to shift such incentives to beneficial electrification.[48]

33. The parties also agreed: (a) equipment that provides gas savings through beneficial electrification may also provide additional electric savings over baseline-efficiency electric equipment; (b) any dekatherm or kilowatt-hour savings may be counted towards PSCo's savings achievements used to calculate its performance incentive; (c) any net economic benefits or costs associated with fuel-switching will be excluded from the performance incentive calculation for the period of this DSM Plan in order to provide time for PSCo and parties to evaluate the net benefits corresponding to these new measures; and (d) the exclusion of these benefits or costs from the performance incentive calculation in this proceeding does not establish a precedent as to the potential treatment of fuel-switching measures in future DSM proceedings.[49]

34. Finally, PSCo agreed to work with stakeholders in 2021 to evaluate the potential for an on-bill financing offering that could potentially expand customer adoption of various technologies, including beneficial electrification, across several customer types. Further, if PSCo

[47] Hearing Exhibit 105 at 5 (§ III) (Settlement Agreement).
[48] Hearing Exhibit 106 at 32:18-21 (Settlement Testimony of PSCo Witness Shawn M. White).
[49] Hearing Exhibit 105 at 5-6 (§ III) (Settlement Agreement).

and the parties reach a general agreement on an on-bill financing offering through the stakeholder meetings, PSCo will seek Commission approval of that proposal.[50]

4. Social Cost of Carbon

35. The social cost of carbon (SCC)

> is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide (CO_2) emissions in a given year. . . . [It] is meant to be a comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, property damages from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning.[51]

36. Section 40-3.2-106(1)(c), C.R.S., "require[s] an electric public utility subject to [C]ommission jurisdiction to consider the cost of carbon dioxide emissions . . . when determining the cost, benefit, or net present value of any plan or proposal submitted in . . . applications related to section 40-3.2-104[.]" Section 40-3.2-106(4), C.R.S., requires "the [C]ommission [to] base the cost of carbon dioxide emissions on the most recent assessment of the social cost of carbon dioxide developed by the federal government. Starting in 2020, the [C]ommission shall use a social cost of carbon of not less than forty-six dollars per short ton."

37. In its Application, PSCo included a value of $0 for the SCC in its calculation of the MTRC, which is used to determine the cost effectiveness analysis of its DSM plan.[52] Instead, it used the SCC in a separate "sensitivity cost/benefit analysis at the portfolio level using the

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[50] Hearing Exhibit 105 at 13-14 (§ XIX) (Settlement Agreement).

[51] Hearing Exhibit 300 at 30:9-15 (citing Environmental Protection Agency's definition at https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html) (Answer Testimony of Staff Witness Seina Soufiani).

[52] Hearing Exhibit 101 at 18-22 (Direct Testimony of PSCo Witness Shawn M. White).

legislated [SCC].” Several Intervenors objected to this use of the SCC and said that it is required to be used in the MTRC.[53]

38. In the Settlement Agreement, PSCo agreed to provide product-level MTRC ratios both including and excluding the SCC impacts and lifetime emissions reduction data for its electric portfolio offerings in the DSM Plan tables. In addition, PSCo will “propose an approach for applying the [SCC] to the [M]TRC and the calculation of net economic benefits for the Electric DSM Portfolio in the next DSM Strategic Issues filing,” which is to be filed by March 31, 2022.[54] All of the parties to the Settlement Agreement state that this provision is in the public interest.

5. Critical Peak Pricing Pilot

39. The Commission approved the Critical Peak Pricing (CPP) Pilot in Decision No. C16-1075 that approved a comprehensive settlement in Proceeding Nos. 16AL-0048E (PSCo’s Phase II Electric Rate Case), 16A-0055E (PSCo’s Application for Approval of the Solar*Connect Program), and 16A-0139E (PSCo’s Application for Approval of the 2017-2019 Renewable Energy Compliance Plan) on November 23, 2016. The CPP Pilot was thereafter incorporated into PSCo’s COLO. PUC No. 8 Electric tariff.[55] According to PSCo:

> The CPP Pilot is a voluntary program that sends price signals that encourage, but do not require, participating customers to reduce their consumption during periods when forecasts indicate there will be high system loads. During these “critical peak” periods, [PSCo] charges a high energy price for usage. This pricing will encourage customers to reduce consumption voluntarily. Participating customers are assessed lower demand charges annually by participating in the CPP Pilot. The CPP tariff is available to commercial and industrial customers that have existing interval

[53] *See*, *e.g.*, Hearing Exhibit 300 at 30:1-36:12 (Answer Testimony of Staff Witness Mr. Soufiani); Hearing Exhibit 400 at 41:2-43:15 (Answer Testimony of CEO Witness Mr. Hay).

[54] Hearing Exhibit 105 at 7 (§ V) (Settlement Agreement).

[55] *See* COLO. PUC No. 8 Electric at Third Revised Sheet Nos. 45 (Secondary General Critical Peak Pricing Service (SG-CPP)) and 56 (Primary General Critical Peak Pricing Service (PG-CPP), and Second Revised Sheet 71 (Transmission General Critical Peak Pricing Service (TG-CPP)).

metering. As reflected in the CPP Tariff pages, the current pilot is scheduled to run through the end of 2021.

40. The Settlement Agreement in Proceeding Nos. 16AL-0048E, 16A-0055E, and 16A-0139E placed a cap of 30 MW on the size of the CPP Pilot. In the Settlement Agreement in this proceeding, the parties agreed to increase the program size cap to 65 MW. The increase is motivated primarily by four facts: (a) participants that do not voluntarily reduce their consumption during periods of high system loads will pay the same amount they would have if they had not enrolled in the Pilot, but enjoy, on average, five to ten percent savings on their annual electric bills if they do;[56] (b) as a result of the foregoing, the CPP Pilot is PSCo's "most popular program for large customers" who have shown "strong demand" for it;[57] (c) the program has recently hit the 30 MW cap in the tariff;[58] and (d) the CPP Pilot has worked; it "has effectively reduced peak system demand on days when reductions are needed most in a cost-effective manner."[59] To accomplish their agreement, the parties have requested a variance from the 30 MW limit placed on the CPP Pilot in PSCo's COLO. PUC No. 8 Electric, which is addressed in detail below.

D. Analysis

1. Burden of Proof

41. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon "the proponent of an order."[60] The parties to this proceeding filed the Joint Motion and, as a result, bear the burden of proof.[61]

[56] Hearing Exhibit 106 at 39:16-21 (Settlement Testimony of PSCo Witness Shawn M. White).

[57] *Id*. at 40:5-9.

[58] Joint Motion at 11.

[59] Hearing Exhibit 106 at 38:5-7 (Settlement Testimony of PSCo Witness Shawn M. White).

[60] § 24-4-105(7), C.R.S.

[61] Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

The parties must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The Commission has an independent duty to determine matters that are within the public interest.[62]

2. Modified Procedure

42. The Application, as modified by the Settlement Agreement, is uncontested. Moreover, the parties agree that a hearing is unnecessary. Finally, the Application and Settlement Agreement are accompanied by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S., and Commission Rule 1403,[63] the Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

3. Settlement Agreement

43. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the parties have satisfied their burden of establishing that the Settlement Agreement is just and reasonable and is in the public interest. The ALJ will approve the Settlement Agreement without material modification and will grant the Application, as modified by the Settlement Agreement.

4. Petitions/Motion for Variances

44. As noted above, PSCo filed Petitions for Variances from Rules 4753(k) and 4756(b)[64] and a Motion for Waiver from the aggregate limit of 30 MW placed on the CPP Pilot in COLO. PUC No. 8 Electric.

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[62] *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).
[63] 4 CCR 723-1.
[64] 4 CCR 723-4.

45. Commission Rule 1003(a)[65] states in relevant part:

> The Commission may, for good cause shown, grant waivers or variances from tariffs, Commission rules, and substantive requirements contained in Commission decisions. In making its determination the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Commission may subject any waiver or variance granted to such terms and conditions as it may deem appropriate.

46. Each request for waiver will be addressed in turn.

a. Petition for Variance From Commission Rule 4753(k)

47. As noted above, the Settlement Agreement proposes budgets for the gas DSM programs of $18,499,094 in 2021, and $18,498,555 in 2022. In the preceding Strategic Issues Proceeding, the Commission approved a budget of $12 million for natural gas DSM.[66] Rule 4753(k)[67] permits PSCo to spend up to 25 percent over that amount without being required to submit a proposed DSM plan amendment, for a total of $15 million. Because the budgets for gas DSM proposed in the Settlement Agreement exceeds $15 million, PSCo requests a variance from Rule 4753(k). None of the parties oppose the request.

48. As support for the request for variance from Rule 4753(k), PSCo states that it:

> has expanded its natural gas portfolio to include more ambitious savings targets than in previous DSM plans to encourage customers to pursue more aggressive carbon dioxide (“CO_2”) emission reductions. The Settlement portfolio targets an approximate 27 percent increase in natural gas savings over historical performance. [PSCo] and Settling Parties agree that an expanded portfolio for the 2021-22 DSM Plan is warranted in order to assist its natural gas customers to reduce their CO_2 emissions from the gas they use in their homes and business while also providing greater support for transformational Beneficial Electrification technologies. Additionally, the proportional increase in forecasted savings exceeds the proportional increase in forecasted budget resulting in a higher savings factor (Dth/$ million) compared to historical performance. Finally, the natural gas DSM

[65] 4 CCR 723-1.

[66] Decision No. C18-0417 at 13 (¶ 49).

[67] 4 CCR 723-4.

portfolio and programs are forecasted to be cost-effective. Therefore, the natural gas DSM budgets and savings goals are reasonable and in the public interest.

49. The ALJ agrees and further concludes that PSCo has established good cause for the requested variance. Accordingly, the Petition for Variances from Rules 4753(k) will be granted.

b. Petition for Variance From Commission Rule 4756(b)

50. As explained above, PSCo included two beneficial electrification offerings involving fuel-switching from natural gas to electricity in its original DSM Plan and the parties to the Settlement Agreement agreed to PSCo's proposal but also agreed to add several new beneficial electrification provisions. Commission Rule 4756(b)[68] prohibits programs involving fuel-switching from natural gas to other fossil fuel derived energy sources to be included in a gas utility's DSM program. Instead, only fuel-switching from natural gas "to renewable energy sources such as solar heating and ground source heat pumps are allowed."[69] For this reason, PSCo has requested a waiver of Commission Rule 4756(b) to allow inclusion of the beneficial electrification provisions in its gas DSM program.

51. As support for the requested variance, PSCo stated that the "settling [p]arties agree Beneficial Electrification is an important tool to help customers reduce their CO_2 emissions and that the enhanced market support identified in the Settlement Agreement is reasonable and in the public interest."[70]

52. The ALJ agrees and further concludes that PSCo has established good cause for the requested variance. Accordingly, the Petition for Variances from Rule 4756(b) will be granted.

[68] 4 CCR 723-4.

[69] 4 CCR 723-4.

[70] Hearing Exhibit 106 at 33:17-19 (Settlement Testimony of PSCo Witness Shawn M. White).

c. Motion for Variance From Tariff Provisions Addressing CPP Pilot

53. As explained above, the parties request a variance from the 30 MW cap on the size of the CPP Pilot contained in PSCo's COLO. PUC No. 8 Electric tariff to accommodate the new cap of 65 MW agreed to in the Settlement Agreement.[71] As explained above, the request is motivated by, among other things, the success of the program in reducing peak system demand and its popularity, as evidenced by the fact that the program recently hit the 30 MW cap. PSCo states that "[i]ncreasing the cap will allow [PSCo] to maintain greater operational flexibility, especially during the summer of 2021, while potentially allowing more participants to enroll, providing additional data points for crafting a permanent CPP offering."[72] On that last point, PSCo agreed in the Settlement Agreement to "file a standalone Advice Letter in 2021, with testimony and analysis supporting a request to expand the CPP Pilot and make it a permanent offering."[73]

54. The ALJ concludes that PSCo has established good cause for the requested variance. Accordingly, the Motion for Variance from the 30 MW cap on the size of the CPP Pilot contained in PSCo's COLO. PUC No. 8 Electric tariff will be granted.

5. Request to Continue 2019-2020 DSM Plan Until Final Approval of 2021-2022 DSM Plan

55. PSCo has requested that it be permitted to continue the 2019-2020 DSM Plan until the plan proposed in the Application, as modified by the Settlement Agreement, is approved in a final Commission decision. The ALJ finds and concludes that there is good cause for the request. Accordingly, it will be granted.

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[71] *See* COLO. PUC No. 8 Electric at Third Revised Sheet Nos. 45 (Secondary General Critical Peak Pricing Service (SG-CPP)) and 56 (Primary General Critical Peak Pricing Service (PG-CPP), and Second Revised Sheet 71 (Transmission General Critical Peak Pricing Service (TG-CPP)).

[72] Hearing Exhibit 106 at 40:15-18 (Settlement Testimony of PSCo Witness Shawn M. White).

[73] *Id*. at 37:3-5.

56. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion to Approve Unopposed Comprehensive Settlement Agreement and Unopposed Motion for Variance (Joint Motion) filed on December 3, 2020 by Public Service Company of Colorado (PSCo), Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Consumer Counsel, the Colorado Energy Office, the City of Boulder, the City and County of Denver, Sierra Club, the National Resources Defense Council, Southwest Energy Efficiency Project, ChargePoint, Inc., Energy Efficiency Business Coalition, Energy Outreach Colorado, and Western Resource Advocates is granted, consistent with the discussion above.

2. Response time to the Joint Motion is waived.

3. The Verified Petition for Waiver From Rule 4753(k) filed by PSCo on July 1, 2020, is granted.

4. The Verified Petition for Waiver From Rule 4756(b) filed by PSCo on July 1, 2020, is granted.

5. The Unopposed Motion for Variance from the 30 MW cap on the Critical Peak Pricing (CPP) Pilot in COLO. PUC No. 8 Electric contained in the Joint Motion is granted.

6. Consistent with the findings, discussion, and conclusions in this Decision, the Unopposed Comprehensive Settlement Agreement filed as Hearing Exhibit 105 on December 3, 2020, is approved without material modification. The Unopposed Comprehensive Settlement Agreement is attached to this Decision as Appendix A.

7. The Verified Application for Approval of its Electric and Natural Gas Demand Side Management Plan (DSM Plan) for Calendar Years 2021 and 2022 (Application) filed by PSCo on July 1, 2020, as modified by Unopposed Comprehensive Settlement Agreement, is granted.

8. PSCo's request to continue the 2019-2020 DSM Plan until the 2021-2022 DSM Plan proposed in the Application as modified by the Unopposed Comprehensive Settlement Agreement is approved in a final Commission decision, is granted.

9. Proceeding No. 20A-0287EG is closed.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion within 20 days after service, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

____
Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director